

## **REMARKS/ARGUMENTS**

### **I. Introduction:**

Claims 1, 2, 3, 10, 11, 12, 19, and 21 are amended, claims 6 and 15 are canceled, and new claims 23-26 are added herein. With entry of this amendment, claims 1-5, 7-14, and 16-26 will be pending.

Applicants acknowledge the Examiner's allowance of claims 7-9, 16-18 and 20, and the subject matter of claims 3-5 and 12-14. Claim 3 has been amended to include the limitations of base claim 1 and claim 12 has been amended to include the limitations of base claim 10. As amended claims 3 and 12 are believed to be in proper form for allowance. Claims 2 and 4-5, depending from claim 3, and claims 11 and 13-14, depending from claim 12, are also believed to be in proper form for allowance.

Claim 22 is directed to an apparatus for operating a path computation element to increase likelihood of successful path placements and generally corresponds to method claim 7. Claim 22 was not identified by the Examiner in the Disposition of Claims. Applicants respectfully submit that claim 22 is allowable for the same reasons as claim 7. New claims 23 and 24, depending from claim 22, are also submitted as allowable for the same reason as claim 22.

New claims 25 and 26 depend from allowed claim 20 and are also submitted as patentable.

### **II. Claim Rejections – 35 U.S.C. 102 and 103:**

Claims 1, 10, 19, and 21 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent Publication No. US 2002/0186658 (Chiu et al.). Claims 2 and 11 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Chiu et al. in view of U.S. Patent No. 5,748,611 (Allen et al.). Claims 6 and 15 stand rejected under

35 U.S.C. 103(a) as being unpatentable over Chiu et al. in view of U.S. Patent Publication No. US 2002/0049849 (Proidl).

Claims 1 and 10 have been amended to include the limitations of claims 6 and 15, respectively. As amended, claims 1 and 10 generally specify that determining that a fragmented bandwidth condition exists in a network comprises monitoring a failure rate in establishing paths and comparing results of the monitoring to a failure rate criterion. In rejecting claims 6 and 15, the Examiner cites Proidl as teaching monitoring a failure rate criterion. Applicants respectfully submit that neither Chiu et al. nor Proidl show or suggest monitoring a failure rate in establishing paths and comparing results of the monitoring to a failure rate criterion in order to determine that a bandwidth condition exists in a network.

The Chiu et al. patent is directed to a method and apparatus for communications traffic engineering and provides for a technique for selectively off-loading traffic from congested sub-regions of a network to more lightly-loaded regions by making use of MPLS. Proidl discloses an Internet receiving arrangement having quality test means for testing whether receiving information data have a satisfactory quality. If the quality is below a threshold value the Internet addresses stored in the Internet receiving arrangement are updated with Internet addresses of information servers stored in an address server connection to the Internet. The quality threshold value is defined as a jitter value or packet failure rate. Proidl is simply concerned with quality of audio data, such as received by means of an Internet radio and does not even address traffic engineering paths. Neither reference, alone or in combination, show or suggest monitoring a failure rate in establishing traffic engineering paths, as set forth in amended claims 1 and 10.

Moreover, applicants respectfully submit that one skilled in the art would not look to Proidl to find a way to determine that a fragmented bandwidth condition exists in a network. Even if, for the sake of discussion, one skilled in the art would look to Proidl, the patent only teaches identifying a quality value from a given packet failure

rate and does not show or suggest monitoring a failure rate in establishing traffic engineering paths.

Accordingly, claims 1 and 10 are submitted as nonobvious over the prior art of record.

Claims 19 and 21 have been amended to generally include the limitations of claim 12, which was objected to in the Office Action dated May 31, 2005. As amended, claims 19 and 21 are believed to be in proper form for allowance.

Claims 2 and 11 have been amended to depend from claims 3 and 12, respectively. As such, claims 2 and 11 are submitted as patentable for the reasons discussed above with respect to claims 3 and 12.

### III. Conclusion:

For the foregoing reasons, Applicants believe that all of the pending claims are in condition for allowance and should be passed to issue. If the Examiner feels that a telephone conference would in any way expedite the prosecution of the application, please do not hesitate to call the undersigned at (408) 399-5608.

Respectfully submitted,



Cindy S. Kaplan  
Reg. No. 40,043

P.O. Box 2448  
Saratoga, CA 95070  
Tel: 408-399-5608  
Fax: 408-399-5609